IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

Crl.MC.No. 2637 of 2006()

AGAINST THE ORDER DATED / / IN CRMP.4937/2006 IN CC.2055/2002 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

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PETITIONER: ACCUSED NO.1

E.K.THOMAS,
EXCISE CIRCLE OFFICE, PALLURUTHY,
COCHIN.

BY ADV. SRI.SUNNY XAVIER

RESPONDENTS: COMPLAINANT

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1. T.A.JOY, S/O. ANTONY, AGED 55,
THATTEKKATTU HOUSE, VIKAS NAGAR,
TRIPUNITHURA.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A. AKBAR.
SRI.L.P.ARAVINDAKSHAN
SMT.S.SREEDEVI(ALP)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 2637 OF 2006

Dated this the 29th day of November, 2006

ORDER

The petitioner faces indictment in a prosecution under Sec.138 of the N.I. Act. Signature in the cheque is admitted. Notice of demand, though allegedly sent in the correct address, was not received and was returned unclaimed. The matter has reached the stage of defence evidence. At that stage, the petitioner filed an application to summon two witnesses. The application was rejected by the learned Magistrate on the ground that sufficient details are not revealed. The petitioner filed yet another application specifying the details. The petitioner wants the two witnesses to be summoned. The first witness is the Circle Inspector of Excise. The second witness is an independent witness allegedly to prove a rent agreement to show the correct residential address of the accused in the year 2002.

2. The learned counsel for the petitioner submits that the examination of these two witness is absolutely necessary. The learned counsel for the petitioner was requested to

explain. First of all, it is contended that the petitioner wants to prove his defence of alibi – that he was not present at the place where money was paid and the the cheque was allegedly handed over to the complainant on 20/8/2002. He was engaged in his official work on that day as an official of the Excise Department. This is the primary purpose for which the Circle Inspector of Excise is sought to be examined. The General Diary maintained in the office is sought to be produced through him.

3. The learned counsel for the respondent/complainant submits that there is absolutely no bona fides or merit in the said prayer and the transparent intention is only to protract the proceedings. At any rate, powers under Sec.482 of the Cr.P.C. do not deserve to be invoked to grant the petitioner a further opportunity to get such witnesses summoned, submits the learned counsel for the respondent/complainant.

4. Under Sec.254(2) of the Cr.P.C., the Magistrate has the discretion and I have considered the question whether the exercise of the discretion can be held to be so unjustified as to persuade this Court to invoke the jurisdiction under Sec.482 of the Cr.P.C.

5. I have been taken through the cross-examination of the

complainant. It is significant that the defence of alibi is not even put specifically to the complainant. There is no specific contention raised before the complainant that the petitioner was engaged in his official work at the relevant time when the cheque was handed over. In these circumstances, I am not certainly satisfied that the powers under Sec.482 of the Cr.P.C. can be invoked to interfere with the said decision of the learned Magistrate.

6. The first and second witnesses are again sought to be summoned for another purpose also. Notice of demand was addressed to the petitioner in his correct official address. The contention is that the petitioner was on leave for 8 days from 22/10/2002 30/10/2002. I shall assume that the petitioner was on leave during this period. Temporary absence from the place of employment of the indictee at the time when the notice could have reached his address is certainly not a sufficient reason to justify the contention that notice of demand has not been given in the proper or correct address. The said contention does not also appeal to me at all to be sufficient to justify the invocation of the jurisdiction under Sec.482 of the Cr.P.C. to interfere with the impugned order.

7. Invocation of the inherent jurisdiction of this Court under Sec.482 of the Cr.P.C. cannot be a matter of course or daily occurrence. Compelling and satisfactory reasons must be shown to exist. I am unable to find any such reasons in this case. I am, in these circumstances, not persuaded to interfere with the rejection of the petitioner's repeated application to summon the witnesses at this stage.

8. In the result, this Crl.M.C. is dismissed. I may hasten to observe that I have chosen only to take the view that the powers under Sec.482 of the Cr.P.C. need not be invoked in favour of the petitioner and the dismissal of this Crl.M.C. will not, in any way, fetter the rights of the petitioner to raise all appropriate contentions and even to challenge the impugned order in a properly instituted appeal against the judgment to be passed in the case, if the same is found to be necessary.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. To Judge